



Dora
Department of Regulatory Agencies

**MARKET CONDUCT EXAMINATION REPORT
AS OF DECEMBER 31, 2008**

PIONEER GENERAL INSURANCE COMPANY

**333 W. Hampden Avenue
Suite 815
Englewood, Colorado 80110**

**NAIC Company Code 12670
NAIC Group Code N/A**



CONDUCTED BY:

COLORADO DIVISION OF INSURANCE

**PIONEER GENERAL INSURANCE COMPANY
333 W. Hampden Avenue
Suite 815
Englewood, Colorado 80110**

**TARGETED MARKET CONDUCT
EXAMINATION REPORT
as of
December 31, 2008**

Examination Performed by:

State Market Conduct Examiner

**Jeffory A. Olson, CIE, FLMI, AIRC, ALHC
Examiner-In-Charge**

And

Independent Contract Examiners

**Sarah S. Malloy, CIE, AIRC, PAHM, HIA, LTCP, ACS, MCM
Lynn L. Zukus, AIE, FLMI**

And

Canvasback Investigations

June 15, 2010

The Honorable Marcy Morrison
Commissioner of Insurance
State of Colorado
1560 Broadway, Suite 850
Denver, Colorado 80202

Commissioner Morrison:

This targeted market conduct examination of Pioneer General Insurance Company (the Company) was conducted pursuant to §§ 10-1-203, 10-1-204, 12-7-108(6) and 12-7-113, C.R.S., which authorize the Insurance Commissioner to examine insurance companies and bail bonding agents. The Company's records were examined at its Denver office located at 333 West Hampden Avenue, Suite 815, Englewood, CO 80110 and at the independent contract examiners' offices. The agents' records were examined at each agent's office by independent contract investigators with Canvasback Investigations, L.L.C. The market conduct examination covered the period from January 1, 2008, through December 31, 2008.

The following market conduct examiners respectfully submit the results of the examination.

Jeffory A. Olson, CIE, FLMI, AIRC, ALHC
Examiner-In-Charge

Sarah S. Malloy, CIE, AIRC, PAHM, HIA, LTCP, ACS, MCM

Lynn L. Zukus, AIE, FLMI

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COMPANY PROFILE

The following profile is based on information provided by the Company and from other sources:

Denver-based Pioneer General Insurance Company is a wholly owned subsidiary of Ponderosa Management, Inc. Ponderosa is a Colorado holding company that specializes in underwriting surety risks in the State of Colorado, primarily bail and civil bonds. The company also writes a limited amount of business in Arizona, New Mexico, Utah, Nevada, Montana, Wyoming, Kansas, Nebraska, and Missouri. In November 2007, Ponderosa was acquired by HCC Insurance Holdings, Inc. HCC is a publicly traded insurance holding company focused on specialty property and casualty business including surety bond coverage. Through the merger of Ponderosa and HCC's subsidiary, Ponderosa Merger Sub, Inc., HCC's strategic focus on surety business is concentrated within the companies comprising the HCC Surety Group, which includes Pioneer General.

This Company was incorporated as the General Title Insurance Company under the laws of South Carolina on April 3, 1946, to write title insurance coverage. The company was inactive for a number of years before being reorganized on December 16, 1983, to include casualty and surety lines. The present title was adopted on June 2, 1982, and the company commenced operations on March 15, 1985. On June 1, 1990, Ponderosa Management Inc., Littleton, Colorado, purchased all of the company's stock from Guarantee Management Inc., a South Carolina holding company which was owned by former officers of Pioneer General. Simultaneously with this purchase, the company redomesticated to Colorado from South Carolina.

Based upon figures reported to the Colorado Division of Insurance (the "Division"), the Company had \$4,209,861 in total taxable bail premium during 2008.

A.M. Best Company has currently assigned Pioneer General a Financial Strength Rating of A- (Excellent) and a Financial Size Category of Class IV.

PURPOSE AND SCOPE

Independent contract examiners for the Colorado Division of Insurance (Division), in accordance with Colorado insurance laws, §§ 10-1-201, 10-1-203, 10-1-204, 10-1-205(8), and 10-3-1106, C.R.S., which empower the Commissioner to examine any entity engaged in the insurance business, reviewed certain business practices of Pioneer General Insurance Company. The findings in this report, including all work products developed in producing it, are the sole property of the Division.

The purpose of the targeted examination was to determine the Company's compliance with Colorado insurance laws related to surety insurance companies. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record.

In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the Market Regulation Handbook adopted by the National Association of Insurance Commissioners. The examiners also employed other guidelines and procedures that the Commissioner deemed appropriate, pursuant to § 10-1-204(1), C.R.S. They relied primarily on records and materials maintained and/or supplied by the Company. The limited market conduct examination covered the period from January 1, 2008, through December 31, 2008.

The examination included review of the following:

- Company Operations and Management
- Advertising, Marketing and Sales
- Complaints
- Producers/Agents
- Contract Forms
- Rating
- New Business
- Claims, to include Bail Bond Forfeiture Judgments and Return of Collateral

The final examination report is a report written by exception. References to additional practices, procedures, or files that did not contain improprieties were omitted. Based on review of these areas, comment forms were prepared for the Company identifying any concerns and/or discrepancies. The comment forms contain a section that permits the Company to submit a written response to the examiners' comments.

For the period under examination, the examiners included statutory citations and regulatory references related to bail bond insurance laws as they pertained to insurance companies. Examination findings may result in administrative action by the Division. Examiners may not have discovered all unacceptable or non-complying practices of the Company. Failure to identify specific Company practices does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any insurance company or insurance company product.

METHODOLOGY

The examiners reviewed the Company's business practices to determine compliance with Colorado insurance laws. For this examination, special emphasis was given to the statutes and regulations as shown in Exhibit 1.

Exhibit 1

Statute or Regulation	Subject
Section 10-1-128, C.R.S.	Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration.
Section 10-2-407, C.R.S.	License – definitions of lines of insurance – authority.
Section 10-2-415.5, C.R.S.	Appointment of insurance producer bail bonding agent – continuation – renewal – exceptions.
Section 10-2-415.7, C.R.S.	Termination of insurance producer bail bonding agent – notice – penalty.
Section 10-2-416, C.R.S.	Notification to the commissioner of termination.
Section 10-2-416.5, C.R.S.	Required availability to commissioner of list of producer appointees for enforcement purposes.
Section 10-2-701, C.R.S.	Assumed names – registration – rules.
Section 10-2-704, C.R.S.	Fiduciary responsibilities.
Section 10-3-209, C.R.S.	Tax on premium collected – exemptions – penalties.
Section 10-3-1104, C.R.S.	Unfair methods of competition and unfair or deceptive acts or practices.
Section 12-7-101, C.R.S.	Definitions.
Section 12-7-102, C.R.S.	License required – qualifications – enforcement.
Section 12-7-102.5, C.R.S.	Prelicensure education requirements – exemptions.
Section 12-7-103, C.R.S.	License requirements – application – qualification bond – forfeiture.
Section 12-7-104.5, C.R.S.	Advisory committee – repeal.
Section 12-7-105, C.R.S.	Reports and records required – bonding agents – division.
Section 12-7-105.5, C.R.S.	Bail recovery services – requirements.
Section 12-7-106, C.R.S.	Denial, suspension, revocation, and refusal to renew license – hearing – alternative civil penalty.
Section 12-7-107, C.R.S.	Notice to surety.
Section 12-7-108, C.R.S.	Bonding agreement – place of business – records – payment schedule – disclosure statements.
Section 12-7-109, C.R.S.	Prohibited activities – penalties.
Section 12-7-110.5, C.R.S.	Rate filing – rules.
Section 12-7-111, C.R.S.	Tax on fees charged.
Section 12-7-112, C.R.S.	Repeal – review of functions.
Section 12-7-113, C.R.S.	Insurance laws – applicability.
Section 16-4-104, C.R.S.	Bail bond - alternatives.
Insurance Regulation 1-1-7	Market Conduct Record Retention
Insurance Regulation 1-1-8	Penalties and Timelines Concerning Division Inquiries and Document Request
Insurance Regulation 1-2-1	Concerning Agent Fiduciary Responsibility
Insurance Regulation 1-2-10	Concerning The Regulation of Insurance Producers By The Colorado Division of Insurance: Colorado Producer Licensing Model Act
Insurance Regulation 1-2-11	Standards for Surety Bail Bonding Agent and Professional Cash Bail Agent Prelicensure Education Requirements

Statute or Regulation	Subject
Insurance Regulation 1-2-14	Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register
Insurance Regulation 1-2-15	Bail Bond Premium Rate Filing Requirements
Insurance Regulation 1-2-16	Bail Bonding Agent Appointment and Termination Requirements for Surety Companies

Sampling Methodology

The examiners selected all files, where a sample of a larger population was taken, on a random sample basis in accordance with the sampling methodology and sample sizes as set forth in the 2009 *NAIC Market Regulation Handbook*. These random samples consisted of six (6) unique populations, one (1) sample for each of the top five (5) agents based on the penal value of bonds posted, and one (1) combined sample for all other agents. An additional five (5) random agent files were selected at each agent's office that was visited. Overall, file documentation was reviewed for thirty-five (35) agents in which power of attorney forms were issued to guarantee bonds.

This resulted in a review of four hundred sixty-nine (469) files from the top five (5) bail bonding agents based on the penal amount of the bonds, and eighty-five (85) files from the balance of the bail bonding agents appointed to write bail bond business for the Company. Additionally, five (5) random files were reviewed at each of the thirty-five (35) total agent offices visited, to produce one hundred seventy-five (175) files for a total of 729 files.

Where the error rates of the samples could indicate that it would be appropriate to select an additional sample but the initial results were conclusive, the Company was afforded the opportunity to agree that the initial sample was appropriate or request that an additional sample be selected. In each case the Company indicated that the initial sample was appropriate.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero dollar (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero dollar (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

When sampling was involved, a minimum error tolerance level of seven percent (7%) for claims, and ten percent (10%) for other areas was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g., timeliness of claims payment), and if one or more of the samples yielded an exception rate higher than the minimum tolerance level, the results of any other samples with exception percentages less than the minimum tolerance level were also included.

Audits and Examinations

The Company was the subject of a previous market conduct examination covering calendar year 2002 which was completed by the Colorado Division of Insurance in July 2003. The Company was also the subject of a financial examination covering the period of January 1, 2005 through December 31, 2008, that was completed by the Colorado Division of Insurance in February 2010.

Company Operations and Management

The examiners reviewed Company management and administrative controls, the Certificate of Authority, record retention, underwriting guidelines, and timely cooperation with the examination process.

Advertising, Marketing and Sales

The Company was asked to provide copies of all advertising materials – whether printed or audio/visual – approved for use by field personnel for the examination period. This was to include company-generated advertising and producer-generated advertising.

Complaints

The Company was asked to make available a copy of its complaint handling guidelines and/or procedures along with a listing of all complaints filed with the Company during the examination period. This listing/register was to include complaints received from the Colorado Division of Insurance as well as complaints made directly to the Company on behalf of consumers regarding bail bond issues regardless of whether or not it was reported to the Colorado Division of Insurance.

Producers/Agents

The samples for review were taken from a population of 9,200 bonds processed by the Company in 2008. Producers with files in the sample of 729 files were required to provide access to the files for review. File documentation was reviewed for thirty-five (35) agents in which power of attorney forms were issued to guarantee bonds.

Contract Forms:

The Company provided specimen copies of the forms used for their bail bond business. The examiners reviewed each of the provided forms as listed below:

<u>FORM NAME</u>	<u>FORM NUMBER</u>
Collateral Receipt	PGIC 3A
Deed of Trust	PGIC 7
Application, Indemnity Agreement & Promissory Note	PGIC 8
Premium Receipt	PGIC 2A
Power of attorney Form	No Form Number
Disclosure Statement	PGIC 6

Rates

The Company provided copies of rate filings applicable for the period of the examination.

New Business

The examiners reviewed 469 files from the top five (5) bail bonding agents based on the penal amount of the bonds, and eighty-five (85) files from the balance of the bail bonding agents appointed to write bail bond business for the Company. Additionally, five (5) random files were reviewed at each of the thirty-five (35) total agent offices visited to produce 175 files, for a total of 729 files.

Claims/Bail Bond Forfeiture Judgments and Return of Collateral

The Company was asked to prepare a list of paid claims to include forfeiture judgments showing the total number of claims and the monetary value of claims paid and to prepare a list of any claims denied, rejected and closed without payment. The Company was also asked to provide a claim procedural manual, codes and keys used in processing claims and copies of any claim forms used.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of seventeen (17) findings in which the Company did not appear to be in compliance with Colorado statutes and regulations. The following is a summary of the examiners' findings.

Company Operations and Management: The examiners identified one (1) area of concern in their review of the Company's Operations and Management:

Issue A1: Failure, in some instances, to maintain records required for market conduct purposes.

Advertising, Marketing and Sales: In the area of Marketing and Sales, no compliance issues are addressed in this report.

Complaints: In the area of Complaints, no compliance issues are addressed in this report.

Producers/Agents: The examiners identified three (3) areas of concern in their review of the producer/agent licensing and appointment, commission schedule and contracting of the Company's agents and sub-agents, as well as the fiduciary responsibilities.

Issue D1: Failure, in some instances, to send notification letters advising of agent terminations to the Commissioner and to the agents.

Issue D2: Failure, in some instances, to register with the Commissioner the use of any assumed, trade or fictitious name prior to using the name. *(This was prior issue "F" in the findings of the 2002 final examination report.)*

Issue D3: Failure of the Company's agents, in some instances, to fulfill fiduciary responsibilities by commingling funds. *(This was prior issue "E" in the findings of the 2002 final examination report.)*

Contract Forms: There were three (3) areas of concern identified during the review of contract forms.

Issue E1: Failure to reflect complete or accurate information regarding the terms under which money or other consideration shall be released on collateral receipt forms.

Issue E2: Failure to reflect a signature line for the bail agent on the promissory note form.

Issue E3: Failure to include a signature line and date line for the bail agent to be able to sign and date the premium receipt.

Rates: There was one (1) area of concern identified during the review of rates.

Issue F1: Failure to establish underwriting criteria to support the premium charged and to apply such criteria uniformly across all underwritten risk.

New Business: There were nine (9) areas of concern identified during the review of new business.

Issue G1: Failure of agents, in some instances, to timely remit premiums to the insurer.

Issue G2: Failure to prepare and provide to the insurer within twenty (20) days a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefor.

Issue G3: Failure, in some instances, to include all required information on the executed/ indemnity agreements.

Issue G4: Failure, in some instances, to use the required Appendix A format for the daily bond register.

Issue G5: Failure, in some instances, to have the promissory note signed by the bail agent.

Issue G6: Failure, in some instances, to include all required information on the premium receipts.

Issue G7: Failure, in some instances, to enter the premium receipt number on the daily bond register.

Issue G8: Failure, in some instances, to include all required information on the disclosure statement.

Issue G9: Use of a single form, in some instances, for multiple powers of attorney on disclosure statements and premium receipts.

Claims: In the area of Claims (including Bail Bond Forfeiture Judgments and Return of Collateral), no compliance issues are addressed in this report.

A copy of the Company's official response to this final Market Conduct Report, if applicable, can be obtained upon request from the Division.

Results of previous market conduct examinations are available on the Division's website at www.dora.state.co.us/insurance or by contacting the Division.

MARKET CONDUCT EXAMINATION REPORT

FACTUAL FINDINGS

COMPANY OPERATIONS AND MANAGEMENT

Issue A1: Failure, in some instances, to maintain records required for market conduct purposes.
--

Colorado Insurance Regulation 1-1-7, Market Conduct Record Retention, promulgated under the authority of § 10-1-109(1), C.R.S., states in part:

Section 4. Records Required For Market Conduct Purposes

- A. *Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's (sic) practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records, and additionally for health insurers/carriers or related entities: network adequacy, utilization review, quality, assessment and improvement, and provider credentialing. Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years. [Emphasis added.]*
- B. *Each producer of record, if the carrier does not maintain, shall maintain records for each policy sold, and the records shall contain all work papers and written communications in the producer's possession pertaining to the documented policy. [Emphasis added.]*

It does not appear that the Company and its agents are in compliance with Colorado insurance law with regard to maintaining records required for market conduct purposes.

The examiners selected a sample of 762 agent files in which power of attorney forms were issued to guarantee bonds. Neither the Company nor its agents were able to provide thirty-three (33) of the selected sample files. Additional files as listed below were provided that did not contain the following forms:

Bail Bonds – Missing Records

Files/Documents Missing	Number of Applicable Files Requested	Number of Documents Missing	Percent Error in Files Reviewed
Complete Sample Files	762	33	4.3%
Indemnity Agreements	729	205	28.1%
Collateral Receipts	89	1	1%
Premium Receipts	729	1	0.1%
Payment Plans	35	35	100%
Disclosure Statements	729	236	32.4%
Applications	729	274	37.6%

Recommendation No. 1:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Insurance Regulation 1-1-7. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that all records required for market conduct purposes are maintained in compliance with Colorado insurance law.

<p><u>PRODUCERS/AGENTS</u></p>

Issue D1: Failure, in some instances, to send notification letters advising of agent terminations to the Commissioner and to the agents.

Section 10-2-415.7, C.R.S., Termination of insurance producer bail bonding agent – notice – penalty, states in part:

- (1) Upon the termination of the appointment of an insurance producer bail bonding agent, *the insurer shall, within fifteen days, notify the commissioner and the appointee of such termination by certified mail.* [Emphasis added.]

Colorado Insurance Regulation 1-2-16, Bail Bonding Agent Appointment and Termination Requirements for Surety Companies, states in part:

Section 5 Rules

B. Bail Bonding Agent Terminations

1. To terminate a bail bonding agent, the bail insurance company shall file a notice of termination with the Division within fifteen (15) days from the date the bail agent is terminated. The bail insurance company shall also notify the bail bonding agent within fifteen (15) days of the termination. Both notifications shall be sent via certified mail.

It appears that the Company's agent termination procedures are not in compliance with Colorado insurance law in that in some cases, the Division of Insurance was not notified of agent terminations within fifteen (15) days from the date the agent was terminated and terminated agents were not sent notification letters within fifteen (15) days of the termination. Both notifications are to be sent via certified mail.

The Company provided a list of eighteen (18) bail bond agents that had terminated during the 2008 period of the examination. For thirteen (13) of these agents, the company was unable to provide any documentation that the required certified letters had been sent to the agent or to the Division.

Termination Notifications

Population	Sample Size	Number of Exceptions	Total Error Rate
18	18	13	72%

Recommendation No. 2:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-2-415.7 and 10-2-416.5, C.R.S. and Colorado Insurance Regulation 1-2-16. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that notice of termination of an agent is sent by certified mail to both the Division and to the agent.

Issue D2: Failure, in some instances, to register with the Commissioner the use of any assumed, trade or fictitious name prior to using the name. *(This was prior issue "F" in the findings of the 2002 final examination report.)*

Section 10-2-701, C.R.S., Assumed names – registration – rules, states:

Any insurance producer using an assumed name, including without limitation a trade or fictitious name, under which the insurance producer conducts business *shall register the name with the insurance commissioner prior to using the assumed name.* The commissioner shall not accept registration of any name that would tend to be misleading to the public or that is identical or similar to the name of any producer whose license has been revoked or suspended. Every insurance producer licensee *shall promptly file with the commissioner a written notice of any change in or discontinuation of the use of any name.* The commissioner may promulgate all rules necessary and proper to implement the provisions of this section. [Emphases added.]

Colorado Insurance Regulation 1-2-10, Concerning the Regulation of Insurance Producers by the Colorado Division of Insurance: Colorado Producer Licensing Model Act, promulgated under the authority of §§ 10-1-109, 10-2-104, 10-2-407, 10-2-413, 10-16-414, and 12-7-102(3) C.R.S., states in part:

...

Section 9 Producer Registration of Assumed (Trade) Name

Each producer shall register with the Commissioner in writing the use of any assumed or fictitious name under which the producer conducts business prior to using the assumed name. The commissioner will not accept registration of any name that is similar or identical to the name of any producer whose license was suspended or revoked. *Producers are reminded that they must provide written notice to the commissioner of any change in or discontinuance of the use of any name.* [Emphases added.]

It appears that the Company and its agents are not in compliance with Colorado insurance law in that in some cases, the agents did not register with the Commissioner the use of any assumed, trade or fictitious name under which the producer conducted business prior to using the assumed name.

Documentation was reviewed for 729 agent files that had been randomly selected from thirty-five (35) bail bonding agents that were authorized to write bail bonds on behalf of the Company. It was noted that thirteen (13) of the thirty-five (35) agents were conducting business under an assumed or trade name. The examiners identified seven (7) agents who were using assumed or trade names for which the Division of Insurance records do not reflect a registration. It appears that in one (1) case, the agent had previously registered an assumed name, but had not notified the Division of the discontinuance of use of the previous assumed name, nor the change in the assumed name being used during the examination period.

Trade Names Registered

Population	Sample Size	Number of Exceptions	Total Error Rate
35	13	7	54%

Recommendation No. 3:

Within thirty (30) days, the Company should provide documentation why it should not be considered in violation of § 10-2-701, C.R.S. and Colorado Insurance Regulation 1-2-10. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that all agents register with the Commissioner the use of any assumed, trade or fictitious name under which the producer conducts business prior to using the assumed name as required by Colorado insurance law.

Issue D3: Failure of the Company's agents, in some instances, to fulfill fiduciary responsibilities by commingling funds. *(This was prior issue "E" in the findings of the 2002 final examination report.)*

Section 10-2-704, C.R.S., Fiduciary responsibilities – states in part:

- (1)(a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article *shall be treated by such insurance producer in a fiduciary capacity.* The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums. [Emphasis added.]

...

- (3) *No insurance producer under this article shall commingle premiums belonging to insurers and returned premiums belonging to insureds, with the producer's personal funds or with any other funds except those directly connected with the producer's insurance business.* [Emphasis added.]

Section 12-7-106, C.R.S., Denial, suspension, revocation, and refusal to renew license – hearing – alternative civil penalty, states in part:

- (1) The division shall deny, suspend, revoke, or refuse to renew, as may be appropriate, the license of any person engaged in the business of bail bonding agent for any of the following reasons:

...

- (g) Failure to report, to preserve without use *and retain separately, or to return collateral* taken as security on any bond to the principal, indemnitor, or depositor of such collateral; [Emphasis added.]

Colorado Insurance Regulation 1-2-1, Concerning Producer Fiduciary Responsibilities, promulgated under the authority of §§ 10-1-109, 10-2-104, 10-2-704 and 10-3-1110, C.R.S., states in part:

Section 4 Rule

...

- B. Upon receipt, the insurance producer or agency *shall treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:* [Emphasis added.]

1. Upon receipt the insurance producer or agency must treat all premiums and return premiums as trust funds *and segregate them from his own funds;* [Emphasis added.]

...

3. The insurance producer or agency *must not treat insurance premiums or returned premiums as a personal or business asset;* [Emphasis added.]

- ...
6. Any deposit of such premium and returned premium funds into a bank or savings account *must be into a separate insurance trust account until actually remitted to the insurer or person entitled thereto*. Such deposits will be subject to the uniform fiduciary's law as delineated in § 15-1-101, et seq, C.R.S. [Emphasis added.]

It appears that the Company and its agents are not in compliance with Colorado insurance law in that in some cases, its agents were not segregating premium monies and/or cash/credit card payment collateral from their business or premium account, or both.

Information obtained from thirty-five (35) agents revealed twenty-five (25) agents were not in compliance with fiduciary requirements for the following reasons:

- (1) Twenty-four (24) of the thirty-five (35) agents did not keep the insurer's portion of their premium monies separate from their business operating account.
- (2) Six (6) of the thirty-five (35) agents did not keep cash/credit card payment collateral separate from their business or premium account. Of these, five (5) agents were already included within (1) above, resulting in one (1) additional exception for a total of twenty-five (25) agents not in compliance.

Producer Accounts

Population	Sample Size	Number of Exceptions	Total Error Rate
35	35	25	71%

Recommendation No. 4:

Within thirty (30) days, the Company should provide documentation why it should not be considered in violation of §§ 10-2-704 and 12-7-106, C.R.S. and Colorado Insurance Regulation 1-2-1. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its agents segregate premium monies and cash/credit card payment collateral from their business or premium account.

CONTRACT FORMS

Issue E1: Failure to reflect complete or accurate information regarding the terms under which money or other consideration shall be released on collateral receipt forms.
--

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statement, states in part:

...

- (4) Each bail bonding agent who accepts money or any other consideration for a bond or undertaking shall, for each payment received, give to each indemnitor a prenumbered, signed receipt as evidence of payment. The prenumbered, signed receipt shall state the date, the name of the defendant, a description of the consideration or amount of money received and the purpose for which it was received, the number of any applicable power of attorney form attached to the bond, the penal sum of the bond, the name of the indemnitor, and *the terms under which the money or other consideration shall be released*. Each bail bonding agent shall retain a duplicate copy of each receipt issued as part of the agent's records and shall account for all of the prenumbered receipts whether they were issued to an indemnitor or destroyed or otherwise not used by the agent. [Emphasis added.]

Section 12-7-109, C.R.S., Prohibited activities – penalties, states in part:

- (1) It is unlawful for any licensee under this article to engage in any of the following activities:

...

- (d.5) Except for the fee received for the bond, to *fail to return any collateral or security within ten working days after receipt of a copy of the court order that results in a release of the bond by the court, unless the collateral also secures other obligations in compliance with section 12-7-108 (10)*. A copy of the court order shall be provided to the bonding agent in Colorado or the company, if any, for whom the bonding agent works whether in Colorado or out-of-state, or both, by the person for whom the bond was written; except that, if three years have elapsed from the date of the posting of the bond, unless a judgment has been entered against the surety or the principal for the forfeiture of the bond, or unless the court grants an extension of the three-year time period for good cause shown, the bail bonding agent, as principal or as surety, shall be exonerated and, at the request of the person who tendered the collateral or security, return the collateral or security to the person who posted the collateral or security within ten business days after the three-year time period. The commissioner may release a lien after the three-year time period has expired if the lienholder cannot be contacted after an attempt has been made by certified mail and the attempt has failed. [Emphasis added.]

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4 Definitions

As used in this regulation, and unless the context requires otherwise:

...

- G. “Prenumbered receipt” means a preprinted or stamped, sequentially numbered receipt, *containing the following information*: date the money or other consideration is received by the bail bonding agent (including any premium paid or collateral received), name of the defendant, a description of the consideration or amount of money received, the purpose for which the consideration or money was received, the number of the bail insurance company power of attorney form attached to the bond (if applicable/available), the penal sum of the bond, the name of the indemnitor, and *the terms under which the money or other consideration shall be released*. [Emphasis added.]

Section 5 Rules

...

B. Prenumbered Receipts

Each bail bonding agent shall use preprinted or stamped, sequentially numbered receipts whenever money or any other consideration for a bond or undertaking is received by the bail bonding agent. The number of each prenumbered receipt must be entered in the Daily Bond Register in sequential order. *Each prenumbered, sequentially numbered receipt shall contain the information listed in the definition section above.* The original prenumbered receipt must be signed and dated by a bail bonding agent and given to the defendant or third party indemnitor and a duplicate copy retained in the bail bonding agent’s permanent office records. Bail bonding agents shall account for all of the prenumbered receipts in the Daily Bond Register, whether they were issued, destroyed or otherwise not used by the bail bonding agent. [Emphasis added.]

It appears that the Company is not in compliance with Colorado insurance law in that the Collateral Receipt forms used by the Company do not contain accurate information regarding the “terms under which the money or other consideration shall be released”.

The Company’s contract with its agents states on page 2:

9. Agent’s Duties. In addition to performing all the specific duties required by the other provisions of this Contract, Agent agrees to:

...

- k. Use of Pioneer Forms To utilize only Pioneer bail bond application, indemnity agreement, real estate disclosure, promissory note, deed of trust, *collateral receipt*, and premium receipt forms. No other forms shall be used with respect to Pioneer

appearance bonds without prior written approval from Pioneer. [Emphasis added.]

The Collateral Receipt form that Pioneer General provides to and requires its agents to use, has only a very “limited” explanation reflected regarding the terms of release for collateral in which it states:

Use of collateral or premium receipt forms other than those authorized by Pioneer General Insurance Company is prohibited. Pioneer General Insurance Company is not responsible for cash or other valuables in connection with this bond unless listed in the appropriate collateral portions of this form. Collateral will be returned only to depositor. *No collateral will be returned until the Court has furnished written evidence the bond has been exonerated and this receipt is returned.* [Emphasis added.]

In addition to not providing information regarding all the circumstances for which collateral is required to be returned, the Company’s form includes an additional requirement for the receipt to be returned, which is not a requirement of Colorado insurance law.

The examiners selected a random sample of 729 files from a total population of 9,200 powers of attorney executed by the Company’s bail bond agents to guarantee bail bonds posted during 2008. Of these 729 files, eighty-nine (89) involved the taking of collateral. There was 1 missing collateral receipt in the sample of 89 agent files reviewed, and this has been included as a failure to maintain records violation in Issue A1.

It appears that the Company and its bail bonding agents are not in compliance with Colorado insurance law in that the bail bonding agents did not provide, a prenumbered receipt for collateral received that contained the terms under which the money or other consideration received would be released.

Bail Bond Producer Files – Collateral Receipts Terms of Release

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
9,200	89	88	88	100%

Form Name

Form Number

Collateral Receipt

PGIC-3A

Recommendation No. 5:

Within thirty (30) days, the Company should provide documentation why it should not be considered in violation of §§ 12-7-108 and 12-7-109, C.R.S. and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its collateral receipt forms reflect correct and complete information regarding the terms under which money or other consideration provided as collateral will be released.

Issue E2: Failure to reflect a signature line for the bail agent on the promissory note form.

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statement, states in part:

- (1) All indemnity agreements, *promissory notes*, premium and collateral receipts, and bond revocation agreements shall be in writing *and signed by the bail bonding agent* and the defendant or third-party indemnitor. ... [Emphasis added.]

It appears that the Company is not in compliance with Colorado insurance law in that the “Promissory Note” forms used by the Company do not reflect a signature line for the bail agent.

The examiners selected a random sample of 729 files from a total population of 9,200 powers of attorney executed by the Company’s bail bond agents to guarantee bail bonds posted during 2008. Of these, 494 files involved promissory notes written on the Company’s promissory note form. The Company’s bail bonding agents failed to sign the promissory note for 490 of the 494 bail bonding agent files reviewed.

Bail Bond Producer Files – Promissory Note Signature

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
9,200	494	494	490	99%

Form Name

Form Number

Promissory Note

PGIC-8 11/07

Recommendation No. 6:

Within thirty (30) days, the Company should provide documentation why it should not be considered in violation of § 12-7-108, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its promissory notes reflect a signature line and are signed by the bail agent as required by Colorado insurance law.

Issue E3: Failure to include a signature line and date line for the bail agent to be able to sign and date the premium receipt.
--

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statement, states in part:

- (1) All indemnity agreements, promissory notes, *premium* and collateral *receipts*, and bond revocation agreement shall be in writing *and signed by the bail bonding agent* and the defendant or third-party indemnitor. ... [Emphasis added.]

...

- (8) An arrangement for the payment of all or part of the premium, commission or fee paid to a bail bonding agent licensed under this article *shall be in writing; signed and dated by the bail bonding agent*, the defendant, or the third-party indemnitor, as applicable; retained by the bail bonding agent, and a copy provided to the defendant or third-party indemnitor; and shall set forth the schedule of such payments. ... [Emphasis added.]

It appears that the Company is not in compliance with Colorado insurance law in that the “Premium Receipt” forms used by the Company do not include a signature line or date line for the bail agent to be able to sign and date the premium receipt.

Form Name

Form Number

Premium Receipt

PGIC-2A

Recommendation No. 7:

Within thirty (30) days, the Company should provide documentation why it should not be considered in violation of § 12-7-108, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its premium receipts reflect both a signature and date line to enable the bail agent to sign and date the receipt as required by Colorado insurance law.

<p><u>RATES</u></p>

Issue F1: Failure to establish underwriting criteria to support the premium charged and to apply such criteria uniformly across all underwritten risk.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts of practices, states in part:

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(f) Unfair discrimination:

(II) *Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; [Emphasis added.]*

Section 10-4-403, C.R.S., Standards for rates – competition – procedure – requirement for independent actuarial opinions regarding 1991 legislation, states in part:

...

- (3) Rates shall not be excessive, inadequate, or unfairly discriminatory. The following rate standards shall apply:

...

- (c) Concerning unfair discrimination, *unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses.* A rate is not unfairly discriminatory solely if different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy. Additionally, the provisions of section 10-3-1104 (1) (f) shall apply. [Emphasis added.]

Colorado Insurance Regulation 1-2-15, Bail Bond Premium Rate Filing Requirements, states in part:

...

Section 5. Rules

...

- (2) *All bail insurance companies must continue to file information, including a schedule of premium rates, necessary to ensure compliance with §10-4-403, C.R.S., which requires that rates not be excessive, inadequate, or unfairly discriminatory. ... [Emphasis added]*

The examiners selected a random sample of 586 files from a total population of 9,200 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. Note that the

number of files reviewed for these charges were evaluated based on only the files selected in the initial six (6) samples from the top five (5) and all other agents, and before the random samples were selected during the onsite agent visits. In addition, one (1) of the files initially provided did not contain complete information. Therefore, this sample size is less than the total sample evaluated for other issues in this exam.

It appears that the Company and its agents are not in compliance with Colorado insurance law in that in 254 cases, the agents charged different premiums for what appeared to be similarly-situated individuals for the same bond amounts with no justification in the file to explain why such individual was being charged a premium less than 15% or \$50.00. Section 10-4-403, C.R.S. permits different premium rates to be charged provided that the rate reflects the differences between different loss exposures with reasonable accuracy. Charging a rate which is different for individuals with the same bond amounts, without documented justification for the premium differences, appears to be unfair discrimination in the rates charged.

Bail Bond Premium Charges

Population	Sample Size	Number of Exceptions	Total Error Rate
9,200	586	254	43%

Recommendation No. 8:

Within thirty (30) days, the Company should provide documentation demonstrating why it should not be considered in violation of §§ 10-3-1104, 10-4-403, C.R.S. and Colorado Insurance Regulation 1-2-15. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has established underwriting criteria sufficient to ensure that similarly situated individuals and risks are treated uniformly in the rates that they are charged and has implemented procedures to ensure that its bail bond producers charge the appropriate, filed premium based on the Company's established underwriting criteria.

NEW BUSINESS

Issue G1: Failure of agents, in some instances, to timely remit premiums to the insurer.

Section 10-2-704, C.R.S., Fiduciary responsibilities, states in part:

- (1)(a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.
- (b) All premiums received, less commissions if authorized, *shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.* [Emphasis added.]
- ...
- (d) *If any insurance producer has failed to account for any collected premium to the insurer to whom it is owing or to its agent entitled thereto for more than forty-five days after the contractual due date or, if there is no contractual due date, more than ninety days after receipt, the insurer or its agent shall promptly report such failure to the commissioner in writing.* [Emphases added.]

It does not appear that the Company's producers/agents are in compliance with Colorado insurance law or with their own Company contracts. Colorado insurance law requires that all premiums received, less commissions if authorized, are to be remitted to the insurer on or before the contractual due date or within forty-five (45) days if there is no contractual due date. If producers/agents fail to meet this forty-five (45) day contractual and statutory requirement to account for any collected premium to the insurer, the insurer shall promptly report such failure to the commissioner in writing.

The examiners selected a random sample of 729 files from a total population of 9,200 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. In 116 of the files, it was determined that received premiums were not submitted to the insurer or its agent within the forty-five (45) days as required by Colorado insurance law and by the Company's agent contracts, resulting in an error rate of 16%.

Bail Bond Producer Files – Premium Reporting

Population	Sample Size	Number of Exceptions	Total Error Rate
9,200	729	116	16%

Recommendation No. 9:

Within thirty (30) days, the Company should provide documentation regarding why it should not be considered in violation of § 10-2-704, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that all premiums received by producers, less commissions if authorized, are remitted to the insurer or its agent thereto on or before the contractual due date or within forty-five (45) days if there is no contractual due date.

Issue G2: Failure to prepare and provide to the insurer within twenty (20) days a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefor.

Section 12-7-107, C.R.S., Notice to surety, states in part:

...

- (3) *The bail bonding agent shall prepare a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefor. The bail bonding agent shall provide such list to the surety within twenty days of taking the collateral. Failure to provide this written list to the surety, keep a file of all such lists for two years following the end of the calendar year in which each was prepared, or provide the list or a copy thereof to the commissioner on request is a violation of this section and shall be a ground for revocation of the bail bonding agent's license.* [Emphases added.]

It appears that the Company and its agents are not in compliance with Colorado insurance law in that its agents did not prepare and provide to the insurer a list of collateral taken within twenty (20) days of taking the collateral.

The examiners selected a random sample of 729 files from a total population of 9,200 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. In response to an examiner's inquiry concerning why collateral is not shown on the reports provided by the agents, the Company indicated that no separate lists of collateral were provided. The reason indicated was that the collateral is shown on the receipt attached to the power of attorney that is submitted with the agent's report. In eighty-nine (89) of the files examined it was determined that collateral had been taken for assurance of compliance with the bond; however, no written list of such collateral had been provided to the insurer.

Bail Bond Producer Files – Collateral Reporting

Population	Sample Size	Number of Exceptions	Total Error Rate
9,200	89	89	100%

Recommendation No. 10:

Within thirty (30) days, the Company should provide documentation why it should not be considered in violation of § 12-7-107, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its agents provide a list to the insurer within twenty (20) days of all collateral taken for assurance of compliance with the bond issued as required by Colorado insurance law.

Issue G3: Failure, in some instances, to include all required information on the executed/indemnity agreements.
--

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

- (1) All indemnity agreements, promissory notes, premium and collateral receipts, and bond revocation agreements shall be in writing and signed by the bail bonding agent and the defendant or third-party indemnitor. *If the defendant or third-party indemnitor is illiterate or does not read the English language, such bail bonding agent shall note on the indemnity agreement that he or she or a third party has read or translated the agreement to the defendant or third-party indemnitor, and shall affix an affidavit attesting that the document was translated to the indemnity agreement.* Premium receipts shall be signed, be dated, and list the amount of the bond paid, and the original given to the defendant or the third-party indemnitor. [Emphasis added]

...

- (5) The bail bonding agent shall keep at the place of his or her business or, if using an agent for service of process required pursuant to subsection (2) of this section, shall make available at the business of the agent for service of process all records pertaining to transactions made under the agent's license and shall keep all the records as to any particular transaction available and open to inspection by the commissioner or the commissioner's authorized representative during normal business hours for the three years immediately after the date of release of the bond and return of the collateral, if applicable, or proof of notice to the defendant or third-party indemnitor that the terms of any promissory note have been satisfied. Such records include, without limitation:

...

- (c) An executed agreement, signed by the indemnitor and a licensed bail bonding agent, setting forth the amount of bail set in the case, the name of the defendant released on the bond, the court case number, if available, and the court in which the bond is executed, *the premium charged*, the amount and type of collateral held by the bail bonding agent, and the conditions under which the collateral will be returned. [Emphasis added.]

Colorado Insurance Regulation 1-2-14 Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4 Definitions

As used in this regulation, and unless the context requires otherwise:

...

- E. "Executed agreement" or "indemnity agreement" means the agreement

whereby the bail bonding agent agrees to post bond for a defendant. Such agreement shall have the name, address, phone number and license number of the bail bonding agent preprinted or stamped on the form *and must contain the following information:* amount of bail set in the case, the name of the defendant to be released on the bond, the court case number, the court in which the bond is executed, *the premium charged* and the amount and type of collateral held by the bail bonding agent and the conditions under which the collateral will be returned. [Emphases added.]

...

Section 5 Rules

...

C. EXECUTED AGREEMENT

Each original executed agreement/indemnity agreement shall have the name, address, phone number and license number of the bail bonding agent preprinted or stamped on the form. The original agreement must be maintained in the agent's permanent office records and a duplicate copy must be provided to the defendant or third party indemnitor. The executed agreement must be signed and dated by the bail bonding agent and the defendant or third party indemnitor. [Emphasis added.]

The examiners selected a random sample of 729 files from a total population of 9,200 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. There were 205 missing indemnity agreements in the sample of 729 agent files reviewed, and these have been included as a failure to maintain records violation in Issue A1.

It appears that in some cases, the Company and its agents are not in compliance with Colorado insurance law in that the following items were missing from the executed/indemnity agreements as noted below.

In 142 instances, the Company's agents did not determine if the defendant or third-party indemnitor was illiterate or did not read the English language, and as a result would require a translation of the indemnity agreement. There is a "Yes" or "No" statement on the indemnity agreement for this determination and it was not completed for 142 of these files.

Bail Bond Producer Files – Executed/Indemnity Agreement, Determination of English Literacy

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
9,200	729	524	142	27%

In 370 instances, the Company's agents failed to preprint or stamp their name, address, phone number and license number on the indemnity agreement.

Bail Bond Producer Files – Executed/Indemnity Agreement, Preprinted or Stamped Contact Information

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
9,200	729	524	370	71%

In 510 instances, the Company's agents did not enter the premium charged on the indemnity agreement.

Bail Bond Producer Files – Executed/Indemnity Agreement, Amount of Premium

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
9,200	729	524	510	97%

In eighty-six (86) instances, the Company's agents did not set forth in the indemnity agreement the amount of collateral held by the agent.

Bail Bond Producer Files – Executed/Indemnity Agreement, Amount of Collateral

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
9,200	729	524	86	16%

In eighty-seven (87) instances, the Company's agents did not set forth in the indemnity agreement the type of collateral held by the agent.

Bail Bond Producer Files – Executed/Indemnity Agreement, Type of Collateral

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
9,200	729	524	87	17%

In eighty-seven (87) instances, the Company's agents did not set forth in the indemnity agreement the conditions under which the collateral would be returned.

Bail Bond Producer Files – Executed/Indemnity Agreement, Terms of Release of Collateral

Population	Sample Size	Number of Records Provided	Number of Exceptions	Total Error Rate
9,200	729	524	87	17%

Recommendation No. 11:

Within thirty (30) days, the Company should provide documentation why it should not be considered in violation of § 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that all executed/indemnity agreements include all information required by Colorado insurance law.

Issue G4: Failure, in some instances, to use the required Appendix A format for the daily bond register.

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

...

- (3) As a minimum requirement for permanent office records, each bail bonding agent who is engaged in the bail bond business *shall maintain a current and up-to-date bond register in a form with such content as prescribed by the commissioner* that shall identify all bonds or undertakings executed by the licensee. [Emphasis added.]

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements And Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4 Definitions

As used in this regulation, and unless the context requires otherwise:

...

- C. “Daily bond register” means the current and up-to-date bond register required by § 12-7-108(3) C.R.S. that identifies every executed bond or undertaking taken by the bail bonding agent *using the form attached in Appendix A*. [Emphasis added.]

...

Section 5 Rules

A. Daily Bond Register

Each bail bonding agent shall maintain a current and up-to-date Daily Bond Register that identifies every executed bond or undertaking taken by the bail bonding agent, *in the form prescribed in Appendix A*, as part of their permanent office records. The form contained in Appendix A shall also be used for the annual report to the Division required by § 12-7-105, C.R.S. Annual reports covering the twelve-month period of July 1 of the prior calendar year through June 30 of the current calendar year are due no later than November 1 of each year, and must include the affidavit in Appendix B. [Emphasis added.]

It appears that the Company and its agents are not in compliance with Colorado insurance law in that in some cases, its agents did not maintain a daily bond register using the required format.

File documentation was reviewed for thirty five (35) agents in which powers of attorney forms were issued to guarantee bonds. Seven (7) of the Company’s bail bonding agents failed to use the format required by Colorado insurance law for their daily bond register.

Bail Bond Producer Files – Daily Bond Register Appendix A

Population	Number of Agents Represented	Number of Exceptions	Total Error Rate
9,200	35	7	20%

Recommendation No. 12:

Within thirty (30) days, the Company should provide documentation why it should not be considered in violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its agents use the form prescribed in “Appendix A” of Colorado Insurance Regulation 1-2-14 for their daily bond register.

Issue G5: Failure, in some instances, to have the promissory note signed by the bail agent.

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statement, states in part:

1. All indemnity agreements, *promissory notes*, premium and collateral receipts, and bond revocation agreements shall be in writing *and signed by the bail bonding agent and the defendant or third-party indemnitor*. ... [Emphasis added.]

It appears that the Company and its agents are not in compliance with Colorado insurance law in that in some cases, the bail bonding agent did not sign the promissory note.

The examiners selected a random sample of 729 files from a total population of 9,200 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. Ninety-seven (97) of the files involved promissory notes written on non- Company forms or on what appear to be Company forms other than the version provided and included in related Issue E2. The Company's bail bonding agents failed to sign the promissory note for seventy-nine (79) of these ninety-seven (97) bail bonding agent files reviewed.

Bail Bond Producer Files – Promissory Note Signature

Population	Number of Non-PGIC Forms	Number of Exceptions	Total Error Rate
9,200	97	79	81%

Recommendation No. 13:

Within thirty (30) days, the Company should provide documentation why it should not be considered in violation of § 12-7-108, C.R.S. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its agents, as well as the defendant or third-party indemnitor, sign the promissory notes.

Issue G6: Failure, in some instances, to include all required information on the premium receipts.

Section 12-7-108, C.R.S, Bonding agreement – place of business – records – payment schedule – disclosure statements, states:

...

- (4) Each bail bonding agent who accepts money or any other consideration for a bond or undertaking shall, for each payment received, give to each indemnitor a prenumbered, signed receipt as evidence of payment. *The prenumbered, signed receipt shall state* the date, the name of the defendant, a description of the consideration or money received and the purpose for which it was received, the number of any power of attorney form attached to the bond, the penal sum of the bond, *the name of the indemnitor*, and the terms under which the money or other consideration shall be released. Each bail bonding agent shall retain a duplicate copy of each receipt issued as part of the agent's records and shall account for all of the prenumbered receipts whether they were issued to an indemnitor or destroyed, or otherwise not used by the agent. [Emphasis added.]

...

- (7) Except for bond filing fees charged by a court or law enforcement agency and the actual cost of storing collateral in a secure, self-service public storage facility or premium financing fees, no bail bonding agent licensed under this article shall charge for such bail bonding agent's premium, commission, or fee an amount more than fifteen percent of the amount of bail furnished by such bonding agent or fifty dollars, whichever is more.

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4. Definitions

As used in this regulation, and unless the context requires otherwise:

...

- G. "Prenumbered receipt" means a preprinted or stamped, sequentially numbered receipt, containing the following information: date the money or other consideration is received by the bail bonding agent (including any premium paid or collateral received), name of the defendant, a description of the consideration or amount of money received, the purpose for which the consideration or money was received, the number of the bail insurance company power of attorney form attached to the bond (if applicable/available), the penal sum of the bond, *the name of the indemnitor*, and the terms under which the money or other consideration shall be released. [Emphasis added.]

Section 5. Rules

B. Prenumbered Receipts

Each bail bonding agent shall use preprinted or stamped, sequentially numbered receipts whenever money or any other consideration for a bond or undertaking is received by the bail bonding agent. The number of each prenumbered receipt must be entered in the Daily Bond Register in sequential order. Each prenumbered, sequentially numbered receipt *shall contain the information listed in the definition section above*. The original prenumbered receipt must be signed and dated by a bail bonding agent and given to the defendant or third party indemnitor and a duplicate copy retained in the bail bonding agent's permanent office records. Bail bonding agents shall account for all of the prenumbered receipts in the Daily Bond Register, whether they were issued, destroyed or otherwise not used by the bail bonding agent. [Emphasis added.]

The examiners selected a random sample of 729 files from a total population of 9,200 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. There was one (1) missing premium receipt in the sample of 729 agent files reviewed, and this has been included as a failure to maintain records violation in Issue A1.

It appears that the Company and its agents are not in compliance with Colorado insurance law in that the following items were missing from the premium receipts as noted below.

In 130 instances, the Company's agents failed to include the name of the indemnitor on the premium receipts.

Bail Bond Producer Files – Premium Receipt Name of Indemnitor

Population	Sample Size	Number of Records provided	Number of Exceptions	Total Error Rate
9,200	729	728	130	18%

In 571 instances, the premium receipts used by the Company's agents did not reflect the terms under which the money or other consideration would be released.

Bail Bond Producer Files – Premium Receipt Terms of Release

Population	Sample Size	Number of Records provided	Number of Exceptions	Total Error Rate
9,200	729	728	571	78%

In 402 instances, the Company's agents charged for miscellaneous fees in addition to the premium for the bond being posted; however, the agents did not provide sufficient details related to these miscellaneous fees on the premium receipt. Therefore, the examiners were unable to determine whether these miscellaneous fees were for eligible expenses as outlined in Colorado insurance law.

Bail Bond Producer Files – Premium Receipt Miscellaneous Fees

Population	Sample Size	Number of Records provided	Number of Exceptions	Total Error Rate
9,200	729	728	402	55%

Recommendation No. 14:

Within thirty (30) days, the Company should provide documentation why it should not be considered in violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its agents include all required information on all premium receipts.

Issue G7: Failure, in some instances, to enter the premium receipt number on the daily bond register.

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

...

- (3) As a minimum requirement for permanent office records, each bail bonding agent who is engaged in the bail bond business shall maintain a current and up-to-date bond register *in a form with such content as prescribed by the commissioner* that shall identify all bonds or undertakings executed by the licensee. [Emphasis added.]

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4. Definitions

As used in this regulation, and unless the context requires otherwise:

...

- C. “Daily bond register” means the current and up-to-date bond register required by § 12-7-108(3), C.R.S., that identifies every executed bond or undertaking taken by the bail bonding agent *using the form attached in Appendix A*. [Emphasis added.]

...

Section 5. Rules

A. Daily Bond Register

Each bail bonding agent shall maintain a current and up-to-date Daily Bond Register that identifies every executed bond or undertaking taken by the bail bonding agent, *in the form prescribed in Appendix A*, as part of their permanent office records. The form contained in Appendix A shall also be used for the annual report to the Division required by § 12-7-105, C.R.S. Annual reports covering the twelve-month period of July 1 of the prior calendar year through June 30 of the current calendar year are due no later than November 1 of each year, and must include the affidavit in Appendix B. [Emphasis added.]

APPENDIX A
DAILY BOND REGISTER

(Report must be typewritten – This report must also be furnished to the Commissioner of Insurance no later than November 1st of each year in order to meet the requirements of § 12-7-111, C.R.S.)

PRE- NUMBERED PREMIUM RECEIPT # OR POA #

The examiners selected a random sample of 729 files from a total population of 9,200 powers of attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008.

It appears that the Company and its agents are not in compliance with Colorado insurance law in that in 151 cases, its agents did not insert the premium receipt number in the column designated for this on the daily bond register.

Bail Bond Producer Files – Daily Bond Register, Premium Receipt Number

Population	Sample Size	Number of Records provided	Number of Exceptions	Total Error Rate
9,200	729	729	151	21%

Recommendation No. 15:

Within thirty (30) days, the Company should provide documentation why it should not be considered in violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its agents insert the premium receipt number on their daily bond register for each bond written.

Issue G8: Failure, in some instances, to include all required information on the disclosure statement.

Section 12-7-108, C.R.S, Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

...

- (9) Every bail bonding agent shall provide, *in a form prescribed by the commissioner*, a disclosure statement to each defendant or third-party indemnitor.
[Emphasis added.]

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4. Definitions

As used in this regulation, unless the context requires otherwise:

...

- D. “Disclosure statement” means the form describing how collateral may be returned, how collateral may be used or forfeited and the physical address to which a copy of the court order releasing the bond shall be delivered. *The Disclosure Statement must be in the form attached in Appendix C.*
[Emphasis added.]

...

Section 5. Rules

...

D. Disclosure Statement

The original Disclosure Statement, *in the format contained in Appendix C*, must be provided to the defendant or third party indemnitor for each bond posted with a duplicate maintained in the agent’s permanent office records. The Disclosure Statement must be signed and dated by the bail bonding agent and the defendant or third party indemnitor. [Emphasis added.]

APPENDIX C
DISCLOSURE STATEMENT

(PREPRINTED OR STAMPED NAME OF THE BAIL BONDING AGENT)

The examiners selected a random sample of 729 files from a total population of 9,200 powers-of-attorney executed by the Company’s bail bond agents to guarantee bail bonds posted during 2008. There were 236 missing disclosure statements in the sample of 729 agent files reviewed, and these have been included as

a failure to maintain records violation in Issue A1.

It appears that in some cases, the Company and its agents are not in compliance with Colorado insurance law in that the following items were missing from the disclosure statements as noted below.

In 302 instances, the Company's agents failed to include the preprinted or stamped name of the bail bonding agent that guaranteed the bond on the disclosure statements as required in Appendix C of Colorado Insurance Regulation 1-2-14.

Bail Bond Producer Files – Disclosure Statement, Preprinted Name of Bail Bonding Agent

Population	Sample Size	Number of Records provided	Number of Exceptions	Total Error Rate
9,200	729	493	302	61%

In 232 instances, the Company's agents did not include the physical address and phone number of the bail bonding agent or agent for service of process for delivery of the bond discharge on the disclosure statement.

Bail Bond Producer Files – Disclosure Statement, Service of Process Information

Population	Sample Size	Number of Records provided	Number of Exceptions	Total Error Rate
9,200	729	493	232	47%

In 214 instances, the Company's agents did not enter the surety company power of attorney number on the disclosure statements.

Bail Bond Producer Files – Disclosure Statement, Power of Attorney Number

Population	Sample Size	Number of Records provided	Number of Exceptions	Total Error Rate
9,200	729	493	214	44%

In 116 instances, the Company's agents failed to include the name of the court in which the bond was executed on the disclosure statements.

Bail Bond Producer Files – Disclosure Statement, Name of Court

Population	Sample Size	Number of Records provided	Number of Exceptions	Total Error Rate
9,200	729	493	116	24%

In sixty-seven (67) instances, the Company's agents did not sign and date the disclosure statement. There were 236 missing disclosure statements in the sample of 729 agent files reviewed, and these have been included as a failure to maintain records violation in Issue A1.

Bail Bond Producer Files – Disclosure Statement, Signature and Date

Population	Sample Size	Number of Records provided	Number of Exceptions	Total Error Rate
9,200	729	493	67	14%

Recommendation No. 16:

Within thirty (30) days, the Company should provide documentation why it should not be considered in violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its agents include all required information on the disclosure statements as required by Colorado insurance law.

Issue G9: Use of a single form, in some instances, for multiple powers of attorney on disclosure statements and premium receipts.

Section 12-7-108, C.R.S., Bonding agreement – place of business – records – payment schedule – disclosure statements, states in part:

...

- (4) Each bail bonding agent who accepts money or any other consideration for a bond or undertaking shall, *for each payment received*, give to each indemnitor a prenumbered, signed receipt as evidence of payment. The prenumbered, signed receipt shall state the date, the name of the defendant, a description of the consideration or amount of money received and the purpose for which it was received, the number of any applicable power of attorney form attached to the bond, the penal sum of the bond, the name of the indemnitor, and the terms under which the money or other consideration shall be released. Each bail bonding agent shall retain a duplicate copy of each receipt issued as part of the agent's records and shall account for all of the prenumbered receipts whether they were issued to an indemnitor or destroyed or otherwise not used by the agent.

[Emphasis added.]

- (5) The bail bonding agent shall keep at the place of his or her business or, if using an agent for service of process required pursuant to subsection (2) of this section, shall make available at the business of the agent for service of process all records pertaining to transactions made under the agent's license and shall keep all the records as to any particular transaction available and open to inspection by the commissioner or the commissioner's authorized representative during normal business hours for the three years immediately after the date of release of the bond and return of the collateral, if applicable, or proof of notice to the defendant or third-party indemnitor that the terms of any promissory note have been satisfied. Such records include, without limitation:

...

- (d) Evidence that the indemnitor has received copies of signed and dated disclosure forms as required by subsection (9) of this section; and

...

- (9) Every bail bonding agent shall provide, in a form prescribed by the commissioner, a disclosure statement to each defendant or third-party indemnitor.

Colorado Insurance Regulation 1-2-14, Concerning Bail Bonding Agent Record Keeping, Reporting Requirements and Daily Bond Register, promulgated under the authority of §§ 10-1-109, 12-7-102(3), 12-7-105, and 12-7-108, C.R.S., states in part:

...

Section 4. Definitions

...

- D. "Disclosure statement" means the form describing how collateral may be returned, how collateral may be used or forfeited and the physical address to which a copy of the court order releasing the bond shall be delivered. The Disclosure Statement must be in the form attached in appendix C.

...

Section 5. Rules

...

B. Prenumbered Receipts

Each bail bonding agent shall use preprinted or stamped, sequentially numbered receipts whenever money or any other consideration for a bond or undertaking is received by the bail bonding agent. The number of each prenumbered receipt must be entered in the Daily Bond Register in sequential order. Each prenumbered, sequentially numbered receipt shall contain the information listed in the definition section above. The original prenumbered receipt must be signed and dated by a bail bonding agent and given to the defendant or third party indemnitor and a duplicate copy retained in the bail bonding agent's permanent office records. Bail bonding agents shall account for all of the prenumbered receipts in the Daily Bond Register, whether they were issued, destroyed or otherwise not used by the bail bonding agent.

...

D. Disclosure Statement

The original Disclosure Statement", in the format contained in Appendix C, *must be provided to the defendant or third party indemnitor for each bond posted* with a duplicate maintained in the agent's permanent office records. The Disclosure Statement must be signed and dated by the bail bonding agent and the defendant or third party indemnitor. [Emphasis added.]

It appears that the Company and its agents are not in compliance with Colorado insurance law in that in some cases, its agents did not use a separate disclosure statement or a separate premium receipt for each POA/Bond that was issued. There were 236 missing disclosure statements in the sample of 729 agent files reviewed, and these have been included as a failure to maintain records violation in Issue A1.

The examiners selected a random sample of 729 files from a total population of 9,200 powers-of-attorney executed by the Company's bail bond agents to guarantee bail bonds posted during 2008. The examiner noted the Company's agents had issued a single disclosure statement in seventy-one (71) instances.

Bail Bond Producer Files – Multiple Disclosure Statements Combined on a Single Form

Population	Sample Size	Number of Records provided	Number of Exceptions	Total Error Rate
9,200	729	493	71	14%

Recommendation No. 17:

Within thirty (30) days, the Company should provide documentation why it should not be considered in violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. In the event the Company is unable to show such proof, it should provide evidence to the Division that it has implemented procedures to ensure that its agents do not combine powers of attorney/bonds on any Disclosure Statements or Indemnity Agreements or any other single form used during the bond underwriting process.

SUMMARY OF ISSUES AND RECOMMENDATIONS	Rec. No.	Page No.
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Issue A1: Failure, in some instances, to maintain records required for market conduct purposes.	1	15
PRODUCERS/AGENTS		
Issue D1: Failure, in some instances, to send notification letters advising of agent terminations to the Commissioner and to the agents.	2	17
Issue D2: Failure, in some instances, to register with the Commissioner the use of any assumed, trade or fictitious name prior to using the name. (This was prior issue "F" in the findings of the 2002 final examination report.)	3	19
Issue D3: Failure of the Company's agents, in some instances, to fulfill fiduciary responsibilities by commingling funds. (This was prior issue "E" in the findings of the 2002 final examination report.)	4	21
CONTRACT FORMS		
Issue E1: Failure to reflect complete or accurate information regarding the terms under which money or other consideration shall be released on collateral receipt forms.	5	25
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Issue G1: Failure of agents, in some instances, to timely remit premiums to the insurer.	9	32
Issue G2: Failure to prepare and provide to the insurer within twenty (20) days a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefor.	10	33
Issue G3: Failure, in some instances, to include all required information on the executed/ indemnity agreements.	11	36
Issue G4: Failure, in some instances, to use the required Appendix A format for the daily bond register.	12	38
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Issue G6: Failure, in some instances, to include all required information on the premium receipts.	14	42
Issue G7: Failure, in some instances, to enter the premium receipt number on the daily bond register.	15	44
Issue G8: Failure, in some instances, to include all required information on the disclosure statement.	16	47
Issue G9: Use of a single form, in some instances, for multiple powers of attorney on disclosure statements and premium receipts.	17	50

Examination Report Submission

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